

**SPECIAL PROVISIONS - CONSTRUCTION CONTRACTS**  
**SP-4 REV 7 SEPTEMBER 5, 2019**

SPECIAL PROVISIONS - CONSTRUCTION CONTRACTS SP-4 Rev 7 September 5, 2019 ..... 1

PREAMBLE ..... 2

1.0 OCCUPATIONAL SAFETY RATING ..... 2

2.0 TAXES ..... 3

3.0 GENERAL LIMITATIONS, REQUIREMENTS, AND WORKING CONDITIONS ..... 3

4.0 WORK AND OPERATIONS AT THE WORKSITE REQUIRING SPECIFIC APPROVAL ..... 3

5.0 RECEIPT OF CONTRACTOR'S SUPPLIES AND/OR EQUIPMENT AT SITE ..... 3

6.0 PROTECTION OF PRODUCTS AND WORK ..... 4

7.0 PROTECTION OF EXISTING FACILITIES ..... 4

8.0 HANFORD SITE STABILIZATION AGREEMENT ..... 4

9.0 PERFORMANCE OF WORK BY THE CONTRACTOR ..... 6

10.0 FEDERAL ACQUISITION REGULATION (FAR) CLAUSES ..... 6

**FAR 52.211-10** Commencement, Prosecution, and Completion of Work (Apr 1984) ..... 6

**FAR 52.222-4** Contract Work Hours and Safety Standards Act – Overtime Compensation. (Jul 2005) ..... 6

**FAR 52.222-6** Davis-Bacon Act (Jul 2005) ..... 7

**FAR 52.222-8** Payrolls and Basic Records (June 2010 ) ..... 9

**FAR 52.222-11** Subcontracts (Labor Standards) (Jul 2005) ..... 10

**FAR 52.222-15** Certification of Eligibility (Feb 1988) ..... 12

**FAR 52.222-16** Approval of Wage Rates (Feb 1988) ..... 12

**FAR 52.222-30** Davis-Bacon Act—Price Adjustment (None or Separately Specified Method) (Dec 2001) .. 12

**FAR 52.225-11** Buy American Act—Construction Materials Under Trade Agreements (Aug 2007) ..... 12

**FAR 52.236-2** Differing Site Conditions (Apr 1984) ..... 15

**FAR 52.236-3** Site Investigation and Conditions Affecting the Work (Apr 1984) ..... 15

**FAR 52.236-9** Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements  
    (Apr 1984) ..... 15

**FAR 52.242-14** Suspension of Work (APR 1984) ..... 16

**FAR 52.246-12** Inspection of Construction (Aug 1996) ..... 16

10.0 FEDERAL ACQUISITION REGULATIONS – INCLUDED BY REFERENCE ..... 18

**FAR 52.222-7** Withholding Of Funds (Feb 1988) ..... 18

**FAR 52.222-9** Apprentices and Trainees (Jul 2005) ..... 18

**FAR 52.222-10** Compliance With Copeland Act Requirements (Feb 1988) ..... 18

**FAR 52.222-12** Contract Termination--Debarment (Feb 1988) ..... 18

**FAR 52.222-13** Compliance With Davis-Bacon and Related Act Regulations (Feb 1988) ..... 18

**FAR 52.222-14** Disputes Concerning Labor Standards (Feb 1988) ..... 18

**FAR 52-222-27** Affirmative Action Compliance Requirements for Construction (Feb 1999) ..... 18

**FAR 52.222-43** Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year  
    and Option Contracts) (May 1989) ..... 18

**FAR 52.236-4** Physical Data (Apr 1984) ..... 18

**FAR 52.236-5** Material and Workmanship (Apr 1984) ..... 18

**FAR 52.236-6** Superintendence by the Contractor (Apr 1984) ..... 18

**FAR 52.236-7** Permits and Responsibilities (Nov 1991) ..... 18

**FAR 52.236-8** Other Contracts (Apr 1984) ..... 18

**FAR 52.236-10** Operations and Storage Areas (Apr 1984) ..... 18

**FAR 52.236-11** Use and Possession Prior To Completion (Apr 1984) ..... 18

**FAR 52.236-12** Cleaning Up (Apr 1984) ..... 18

**FAR 52.236-13** Accident Prevention (Nov 1991) ..... 18

<b>FAR 52.236-14</b>	Availability and Use Of Utility Services (Apr 1984) .....	18
<b>FAR 52.236-15</b>	Schedules for Construction Contracts (Apr 1984) Modified .....	18
<b>FAR 52.236-17</b>	Layout of Work (Apr 1984).....	18
<b>FAR 52.236-21</b>	Specifications and Drawings for Construction (Feb 1997) Alt 1 (Feb 1997).....	18
<b>FAR 52.236-26</b>	Preconstruction Conference (Feb 1995).....	18

**PREAMBLE**

- A. These Special Provisions are requirements of any contract in which this Special Provision document is incorporated. These Special Provisions are applicable in their entirety unless specifically deleted or amended in the Contract and are in addition to the General Provisions and other Special Provisions that apply to this Contract. In the event of a conflict between these Special Provisions and the General Provisions, these Special Provisions shall take precedence.
- B. Without in any way limiting the Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses which may be applicable to this action by law or regulation, the FAR, DEAR and other regulation references herein are specifically incorporated into this contract. Applicability instructions and comments are provided for convenience only. Contractor is responsible for reviewing the full text of each clause and requesting clarification if the intent or applicability to this specific contract is not clear.
- C. In the referenced clauses, the obligations of CHPRC to the Government as provided in said clauses shall be deemed to be the obligations of the Contractor to CHPRC unless otherwise noted below:
- D. Whenever necessary to make the context of the FAR/DEAR clauses applicable to this contract, the term "disputes" shall mean "claims" and the terms "Government," "Contracting Officer," and equivalent phrases shall mean CHPRC except the terms "Government," and "Contracting Officer" do not change:
  - 1. in the phrases referencing "Government Property" and "Government-Owned Equipment,"
  - 2. in the clauses referring to "intellectual property rights", "Stop Work", "nuclear hazards indemnity"
  - 3. when a right, act, authorization, or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer or duly authorized representative,
  - 4. when access to proprietary financial information or other proprietary data is required for purposes other than CHPRC's obligation to evaluate Cost/Price data submitted by Contractor in conjunction with any provision of this contract,
  - 5. when title to property is to be transferred directly to the Government
- E. If there is a conflict between the referenced clauses and the terms and conditions found elsewhere in this Contract, the below FAR/DEAR and Regulatory references shall take precedence.
- F. Contractor shall flowdown to its subcontracts at all tiers the applicable portions of these provisions and referenced FAR/DEAR clauses. Referenced Clauses are available at:  
[http://management.energy.gov/policy\\_guidance/procurement\\_acquisition.htm](http://management.energy.gov/policy_guidance/procurement_acquisition.htm)

**1.0 OCCUPATIONAL SAFETY RATING**

- 1. The contractor shall submit with their proposal and at any time during contract performance when requested by CHPRC, a completed *Contractor Occupational Safety and Industrial Hygiene Pre-qualification form* (A-6004-812). Qualification forms are all also to be submitted for all major subcontractors and may either be submitted with the proposal (preferred) or prior to subcontractor being used on site. Contractor and contractor's major subcontractor safety reporting and Workers Compensation Experience Rating (EMR) will be evaluated by CHPRC and used as one basis for eligibility for contract award and/or continued access to the site.  
  
Contractor's and Subcontractor's acceptable safety rating is a material requirement of this contract

## 2.0 TAXES

The contract price includes all taxes, duties and fees. The Contractor shall not be reimbursed for personal property taxes on construction equipment and other property owned by the Contractor, nor on taxes on net income of the Contractor.

The Contractor shall pay when due, and the contract price shall include, all taxes, duties, fees and other assessments of whatever nature imposed by government authorities and applicable to the performance of the Work and this contract.

## 3.0 GENERAL LIMITATIONS, REQUIREMENTS, AND WORKING CONDITIONS

1. **Orientation.** Prior to entry by the Contractor onto the Worksite, the Contractor's supervisory employees shall attend a general orientation (to be conducted by CHPRC) to acquaint themselves with the working conditions and requirements to be imposed at the Worksite. Contractor shall orient all its other employees, its Subcontractors and their employees, as to such working conditions and requirements.
2. **Heavy Equipment** Heavy equipment will not be allowed to cross existing paved roadways unless such roadway is protected by rubber tires or other adequate protection such as heavy planking. Movement of heavy equipment equipped with crawler-type treads on existing paved surfaces is forbidden and such equipment must be transported to the Worksite on rubber-tired trailers. Upon completion of the Work, the equipment shall be promptly removed from the Worksite.
3. **Work Area Housekeeping.** The Contractor shall at all times keep the Work area, including storage areas used by it, in an orderly condition free from accumulations of waste materials or rubbish. All materials shall be kept in neat piles and protected from the elements until installed. Prior to or upon completion of the Work, the Contractor shall remove from the Worksite all rubbish, and all tools, scaffolding, equipment and materials not the property of the Government or CHPRC. Upon completion of the Work, the Contractor shall leave the construction area in a clean, neat condition, satisfactory to CHPRC.
4. **Work Area Limitations.** The Contractor shall restrict its personnel and operations to the limits of the Work area. Any changes and or modifications to existing installations located at the outer limits of the Work area shall be permitted only after specific approval is received from CHPRC.
5. **Removal and Disposal of Existing Equipment and/or Materials.** All miscellaneous items removed by the Contractor and not specified to be reused shall remain the property of the Government, and shall be placed at a location adjacent to the Worksite as directed in the field by CHPRC.
6. **Construction Activity Near Railroad Tracks.** Any construction activity within 25 feet of the centerline of railroad tracks extending to 100 feet in some areas must be coordinated with CHPRC's Railroad Operations (Tri-City Railroad).

## 4.0 WORK AND OPERATIONS AT THE WORKSITE REQUIRING SPECIFIC APPROVAL

The Contractor shall not perform work at the Worksite on other than regular day shift, as set out in the Specifications, unless it has given prior written notification to CHPRC's and has received approval in advance.

## 5.0 RECEIPT OF CONTRACTOR'S SUPPLIES AND/OR EQUIPMENT AT SITE

The Contractor shall not schedule supplies and/or equipment for delivery to the Hanford Site until such time as the Contractor is mobilized to receive or accept their property at the Worksite. The Contractor shall not be permitted to use CHPRC's mailing address and in no case shall material or equipment be addressed in care of CHPRC. It is recognized that special conditions may exist that would warrant assistance in the delivery of equipment or materials by CHPRC. However, the Contractor must have explicit prior written permission and authorization from CHPRC. Any deviation from this requirement will result in backcharge(s) to the Contractor for any costs incurred by CHPRC.

## **6.0 PROTECTION OF PRODUCTS AND WORK**

The Contractor shall protect and preserve all products of every description (including products which may be CHPRC-furnished or Government-owned) and all work performed. Until the Work is accepted as completed, Contractor shall have the risk of loss for damage to, loss or destruction of the Work, and for such products. If, as determined by CHPRC, products and work performed are not adequately protected by the Contractor they may be protected by CHPRC and the cost incurred by CHPRC charged to or deducted from any payments due to the Contractor.

## **7.0 PROTECTION OF EXISTING FACILITIES**

1. The existing facilities that are shown on the drawings, identified in the specifications, marked in the field, or the location of which are reasonably determinable by the Contractor shall be protected from damage by the Contractor and if damaged, shall be reported immediately as an occurrence to CHPRC. Any required repairs shall then be made by the Contractor, or by others, in a manner approved by CHPRC, at the Contractor's expense.
2. The Contractor shall protect from damage all existing improvements and utilities (1) at or near the Worksite and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the Work. If the Contractor fails or refuses to repair the damage promptly, CHPRC may have the necessary work performed and charge the cost to the Contractor.
3. When underground facilities which are not shown on the drawings, identified in the specifications, marked in the field, or the locations of which are not reasonably determinable by the Contractor, are encountered by the Contractor, work at such locations shall be stopped immediately and CHPRC notified. Work at such locations shall not continue until released by CHPRC.
4. Any damage to existing facilities that are not shown on the drawings, identified in the specifications, marked in the field, or the locations of which are not reasonably determinable by the Contractor in sufficient time to avoid damage shall be reported immediately to CHPRC. Work at such locations shall not continue until released by CHPRC. Any required repairs shall be made by the Contractor, or by others, in a manner approved by CHPRC. If the repairs are made by the Contractor, an equitable adjustment shall be made and the Contract shall be modified in writing accordingly. If other extra expense is incurred by the Contractor due to the existence of facilities that are not shown on the drawings, identified in the specifications, marked in the field, or the locations of which are not reasonably determinable by the Contractor at the time of bidding, an equitable adjustment will be made and the Contract modified in writing accordingly.
5. When excavation work endangers the stability of known existing facilities, the Contractor shall provide adequate shoring, bracing and temporary guying to protect the facilities until backfilling is completed. This protection shall be the Contractor's responsibility entirely.

## **8.0 HANFORD SITE STABILIZATION AGREEMENT**

1. The Hanford Site Stabilization Agreement (HSSA) for all construction work for the U. S. Department of Energy (DOE) at the Hanford Site, which is referenced in this Clause, consists of a Basic Agreement dated September 10, 1984, plus Appendix A, both of which may be periodically amended. The HSSA is hereby incorporated into this Contract by reference. The Contractor is responsible for obtaining the most current text.
2. This Clause applies to employees performing work under Contracts (or subcontracts) administered by CHPRC which are subject to the Davis-Bacon Act, in the classifications set forth in the HSSA for work performed at the Hanford Site.
3. Contractors and subcontractors at all tiers who are parties to an agreement(s) for construction work with a Local Union having jurisdiction over construction work performed at the Hanford Site, or who are parties to a national labor agreement for such construction work, shall become signatory to the HSSA and shall abide by all

of its provisions, including its Appendix A. Subcontractors at all tiers who have subcontracts with a signatory Contractor or subcontractor shall become signatory to the HSSA and shall abide by all of its provisions, including its Appendix A.

4. Contractors and subcontractors at all tiers who are not signatory to the HSSA and who are not required under paragraph (c) above to become signatory to the HSSA, shall pay not less and no more than the wages, fringe benefits, and other employee compensation set forth in Appendix A thereto and shall adhere, except as otherwise directed by CHPRC, to the following provisions of the Agreement:
  - (1) Article VII Employment (Section 2 only);
  - (2) Article XII Non-Signatory Contractor Requirements;
  - (3) Article XIII Hours of Work, Shifts, and Overtime;
  - (4) Article XIV Holidays;
  - (5) Article XV Wage Scales and Fringe Benefits (Sections 1 and 2 only);
  - (6) Article XVII Payment of Wages-Checking In and Out (Section 3 only);
  - (7) Article XX General Working Conditions; and
  - (8) Article XXI Safety and Health.
5. The Contractor agrees to make no contributions in connection with this Contract to Industry Promotion Funds, or similar funds, except with the prior approval of CHPRC.
6. The obligation of the Contractor and its subcontractors to pay fringe benefits shall be discharged by making payments required by this Contract in accordance with the provisions of the amendments to the Davis-Bacon Act contained in the Act of July 2, 1964 (Public Law 88-349-78 Statutes 238-239), and U.S. Department of Labor regulations in implementation thereof (Code of Federal Regulations Title 29 Parts 1 and 5).
7. CHPRC may direct the Contractor to pay amounts for wages, fringe benefits, and other employee compensation if the HSSA, including its Appendix A, is modified by the involved parties.
8. In the event of failure to comply or failure to perform any of the obligations imposed upon the Contractor and its subcontractors hereunder, CHPRC may withhold any payments due to the Contractor and may terminate the Contract for default.
9. The rights and remedies of CHPRC provided in this clause shall not be exclusive and are in addition to any other rights and remedies of CHPRC provided by law or under this Contract.
10. The requirements of this Clause are in addition to, and shall not relieve the Contractor of, any obligation imposed by other Clauses of this Contract, including Clauses entitled, FAR 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation, FAR 52.222-6, Davis-Bacon Act, FAR 52.222-7, Withholding of Funds, FAR 52.222-8, Payrolls and Basic Records, FAR 52.222-10, Compliance with Copeland Act Requirements, and FAR 52.222-12, Contract Termination – Debarment.
11. The Contractor agrees to maintain its bid or proposal records showing rates and amounts used for computing wages and other compensation, and its payroll and personnel records during the course of work subject to this Clause, and to preserve such records for a period of three (3) years thereafter, for all employees performing such work. Such records will contain the name and address of each such employee, his/her correct classification, rate of pay, daily and weekly number of hours worked, and dates and hours of the day within which work was performed, deductions made, and amounts for wages and other compensation covered by paragraphs (c) (d) (e) (f) and (g) hereof. The Contractor agrees to make these records available for inspection by CHPRC and will permit him/her to interview employees during working hours on the job.
12. The Contractor agrees to insert the provisions of this Clause including this paragraph in all subcontracts for the performance of work subject to the Davis-Bacon Act.

A copy of the Hanford Site Stabilization Agreement is located at: <http://www.hanfordvitplant.com/hssa/>

The U.S. Department of Labor wage determinations for the Davis-Bacon Act and Service Contract Act are located at: <http://www.wdol.gov>

## 9.0 PERFORMANCE OF WORK BY THE CONTRACTOR

Unless otherwise agreed to by Buyer, the Contractor shall perform on site, and with its own organization, work equivalent to at least 12 percent of the total amount of work to be performed under this contract. This percentage may be reduced or increased by a supplemental agreement to this contract.

## 10.0 FEDERAL ACQUISITION REGULATION (FAR) CLAUSES

### FAR 52.211-10 Commencement, Prosecution, and Completion of Work (Apr 1984)

The Contractor shall be required to (a) commence work under this Contract within the time frame specified in the contract after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than the date specified in the contract. The time stated for completion shall include final cleanup of the premises.

### FAR 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation. (Jul 2005)

- (a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.
- (b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards Act.
- (c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or Federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.
- (d) *Payrolls and basic records.*
  - (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
  - (2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

- (e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower-tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

**FAR 52.222-6**                      Davis-Bacon Act (Jul 2005)

- (a) *Definition.*—“Site of the work”—

(1) Means--

(i) *The primary site of the work.* The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any.* Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(1)(i), or the “secondary site of the work” as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

- (b)

(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the

first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

- (2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.
- (3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
- (4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(c)

- (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:
  - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
  - (ii) The classification is utilized in the area by the construction industry.
  - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division  
Employment Standards Administration  
U.S. Department of Labor  
Washington, DC 20210



The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

**FAR 52.222-8** Payrolls and Basic Records (June 2010 )

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional [Form WH-347](#) is available for this purpose and may be obtained from the U.S. Department of Labor Wage and Hour Division website

at <http://www.dol.gov/whd/forms/wh347.pdf>. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social security numbers to the Prime Contractor for its own records, without weekly submission to the Contracting Officer.

(2) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of [Optional Form WH-347](#) shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **FAR 52.222-11** Subcontracts (Labor Standards) (Jul 2005)

- (a) *Definition.* “Construction, alteration or repair,” as used in this clause means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—
- (1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;
  - (2) Painting and decorating;
  - (3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
  - (4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the “site of the work” as defined in the FAR clause at 52.222-6, Davis-Bacon Act of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the “site of work” definition; and

- (5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the FAR clause at 52.222-6, Davis-Bacon Act, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222-6, in the “site of the work” definition).
- (b) The Contractor or subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—
  - (1) Davis-Bacon Act;
  - (2) Contract Work Hours and Safety Standards Act -- Overtime Compensation (if the clause is included in this contract);
  - (3) Apprentices and Trainees;
  - (4) Payrolls and Basic Records;
  - (5) Compliance with Copeland Act Requirements;
  - (6) Withholding of Funds;
  - (7) Subcontracts (Labor Standards);
  - (8) Contract Termination – Debarment;
  - (9) Disputes Concerning Labor Standards;
  - (10) Compliance with Davis-Bacon and Related Act Regulations; and
  - (11) Certification of Eligibility.
- (c) The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).
- (d)
  - (1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor’s signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.
  - (2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.
- (e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

**FAR 52.222-15** Certification of Eligibility (Feb 1988)

- (a) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR (a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**FAR 52.222-16** Approval of Wage Rates (Feb 1988)

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

**FAR 52.222-30** Davis-Bacon Act—Price Adjustment (None or Separately Specified Method)  
(Dec 2001)

- (a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.
- (b) The Contracting Officer will make no adjustment in contract price, other than provided for elsewhere in this contract, to cover any increases or decreases in wages and benefits as a result of—
  - (1) Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the contract;
  - (2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or
  - (3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Davis-Bacon Act.

**FAR 52.225-11** Buy American Act—Construction Materials Under Trade Agreements  
(Aug 2007)

- (a) *Definitions.* As used in this clause—
  - “Caribbean Basin country construction material” means a construction material that—
    - (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
    - (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.
  - “Component” means an article, material, or supply incorporated directly into a construction material.
  - “Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.
  - “Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free Trade Agreement country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“WTO GPA country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) This clause implements the Buy American Act ([41 U.S.C. 10a-10d](#)) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

none

[Contracting Officer to list applicable excepted materials or indicate "none"]

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
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Item 1:

Foreign construction material	_____	_____	_____
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Domestic construction material	_____	_____	_____
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Item 2:

Foreign construction material \_\_\_\_\_

Domestic construction material \_\_\_\_\_

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

**FAR 52.236-2 Differing Site Conditions (Apr 1984)**

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Buyer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract.
- (b) Buyer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this Clause and the Contract modified in writing accordingly.
- (c) No request by the Contractor for an equitable adjustment to the Contract under this Clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in paragraph (a) of this Clause for giving written notice may be extended by the Buyer.
- (d) No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

**FAR 52.236-3 Site Investigation and Conditions Affecting the Work (Apr 1984)**

- (a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Buyer or the Government, as well as from the drawings and specifications made a part of this Contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Buyer or the Government.
- (b) Buyer assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Buyer or the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

**FAR 52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements (Apr 1984)**

- (a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere

with the work required under this Contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during Contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Buyer.

- (b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Buyer may have the necessary work performed and charge the cost to the Contractor.

**FAR 52.242-14**                      Suspension of Work (APR 1984)

- (a) Buyer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Contract for the period of time that Buyer determines appropriate for the convenience of the Government.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of Buyer in the administration of this Contract, or (2) by Buyer's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustment shall be made under this Clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.
- (c) A claim under this Clause shall not be allowed--
  - (1) For any costs incurred more than 20 days before the Contractor shall have notified Buyer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and
  - (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.

**FAR 52.246-12**                      Inspection of Construction (Aug 1996)

- (a) *Definition.* "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) Government inspections and tests are for the sole benefit of the Government and do not—
  - (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
  - (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
  - (3) Constitute or imply acceptance; or
  - (4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) of this section.



- (d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.
- (e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.
- (f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- (g) If the Contractor does not promptly replace or correct rejected work, the Government may—
  - (1) By contract or otherwise, replace or correct the work and charge the cost to the Contractor; or
  - (2) Terminate for default the Contractor's right to proceed.
- (h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

**10.0 FEDERAL ACQUISITION REGULATIONS – INCLUDED BY REFERENCE**

<b>FAR 52.222-7</b>	Withholding Of Funds (Feb 1988)
<b>FAR 52.222-9</b>	Apprentices and Trainees (Jul 2005)
<b>FAR 52.222-10</b>	Compliance With Copeland Act Requirements (Feb 1988)
<b>FAR 52.222-12</b>	Contract Termination--Debarment (Feb 1988)
<b>FAR 52.222-13</b>	Compliance With Davis-Bacon and Related Act Regulations (Feb 1988)
<b>FAR 52.222-14</b>	Disputes Concerning Labor Standards (Feb 1988)
<b>FAR 52-222-27</b>	Affirmative Action Compliance Requirements for Construction (Feb 1999)
<b>FAR 52.222-43</b>	Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts) (May 1989)
<b>FAR 52.236-4</b>	Physical Data (Apr 1984)
<b>FAR 52.236-5</b>	Material and Workmanship (Apr 1984)
<b>FAR 52.236-6</b>	Superintendence by the Contractor (Apr 1984)
<b>FAR 52.236-7</b>	Permits and Responsibilities (Nov 1991)
<b>FAR 52.236-8</b>	Other Contracts (Apr 1984)
<b>FAR 52.236-10</b>	Operations and Storage Areas (Apr 1984)
<b>FAR 52.236-11</b>	Use and Possession Prior To Completion (Apr 1984)
<b>FAR 52.236-12</b>	Cleaning Up (Apr 1984)
<b>FAR 52.236-13</b>	Accident Prevention (Nov 1991)
<b>FAR 52.236-14</b>	Availability and Use Of Utility Services (Apr 1984)
<b>FAR 52.236-15</b>	Schedules for Construction Contracts (Apr 1984) Modified
<b>FAR 52.236-17</b>	Layout of Work (Apr 1984)
<b>FAR 52.236-21</b>	Specifications and Drawings for Construction (Feb 1997) Alt 1 (Feb 1997)
<b>FAR 52.236-26</b>	Preconstruction Conference (Feb 1995)